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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

EDITH ARELLANO,

Plaintiff and Respondent,

v.

FRANCIS OKYERE,

Defendant and Appellant.

2d Civ. No. B289204  
(Super. Ct. No. 56-2017-  
00493298-CU-BC-VTA)  
(Ventura County)

Defendant Francis Okyere appeals a judgment in favor of plaintiff Edith Arellano on Arellano's action for breach of contract. We conclude, among other things, that Okyere has not shown the trial court erred by granting Arellano's motion for summary judgment. We affirm.

FACTS

Arellano operated an insurance business known as PTS Insurance. She paid rent to maintain offices in Oxnard and Santa Barbara, California for this business. She owned what is referred to in the insurance sales industry as a "book of business." Arellano said her book of business generated

“approximately one million dollars per year in premiums through Kemper Insurance Company, Safeco Insurance Company and Access General Insurance Company.” Okyere was also in the insurance business and wanted to purchase Arellano’s book to earn commissions.

In 2013, Okyere and Arellano signed a contract to sell Arellano’s book of business to Okyere for \$135,000. The agreement required Okyere to pay installment payments of \$4,500 per month for 30 months. The first payment was due on December 5, 2013, and the final payment was due “on or before May 5, 2016.” Okyere agreed to be “responsible for all costs associated with” Arellano’s Santa Barbara and Oxnard offices, “including rent, utilities and any other expenses.” He agreed that Arellano had “no responsibility for any of the costs associated with these two locations.”

The contract provided that “[i]f any monthly payment is not made within 90 days, then [Arellano has] the right [to] reassert control and ownership of the Book of Business and retake the premises in Santa Barbara and Oxnard.”

Okyere did not pay the November 2015 payment. That November check was “returned for insufficient funds.” On September 23, 2016, Arellano wrote to Okyere stating, “You failed to make good on a check for the November 2015 payment. That is ten months overdue.”

On February 24, 2017, Arellano filed a complaint for damages for breach of contract against Okyere. She alleged Okyere: 1) “failed to make the November 2015 payment required under the contract,” 2) failed to pay the rent for the Santa Barbara office for “February and March 2015,” and 3) “failed to keep the Oxnard” office “rent current.” Arellano said that, as a

result of Okyere's failure to pay the rent for those offices, she was required to pay the rent as "she [was] still responsible for the lease." She claimed she was entitled to damages for Okyere's breach of the contract and sought "ownership of the book of business and the right to the premises in Santa Barbara and Oxnard."

Okyere filed an answer to the complaint and denied Arellano's allegations.

Arellano served Okyere with requests for admissions asking Okyere to admit the following facts: 1) that Okyere "breached the contract . . . by failing to make all monthly payments as required by the contract"; 2) that he did not make "the November 2015 payment"; 3) that he "failed to pay the full purchase price for the BOOK OF BUSINESS"; 4) that check No. 2119 "was returned due to non-sufficient funds"; 5) that Okyere "never issued any replacement check"; and 6) that he has "no lease for [the Santa Barbara property]." Arellano also requested Okyere to admit the genuineness of various bank records that supported her position.

Arellano filed a motion to deem the requests for admissions of facts and the genuineness of documents admitted because Okyere did not serve "a timely response." The trial court granted that motion.

Arellano filed a motion for summary judgment, alleging that Okyere did not make the payments required by the contract and "there is no defense to [this] cause of action."

The trial court granted summary judgment. It found: 1) Okyere did not file an opposition to the summary judgment motion, and 2) Arellano proved that Okyere breached the contract. It awarded Arellano "ownership of the Book of

Business” and \$240,265.22 as damages for “the amount of all insurance commissions” Okyere received from February 5, 2016, through August 3, 2016.

### DISCUSSION

Okyere contends the trial court erred by granting Arellano’s motion for summary judgment. We disagree.

Okyere did not timely respond to the requests for admissions. The trial court granted an order to deem those requests admitted.

“A party may request that another litigant ‘admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact.’” (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 774.) “‘A request for admission may relate to a matter that is in controversy between the parties.’” (*Ibid.*) “‘[T]he purpose of the admissions procedure . . . is to limit the triable issues and spare the parties the burden and expense of litigating undisputed issues.’” Sometimes, the admissions obtained will even leave the party making them vulnerable to summary judgment.’” (*Id.* at p. 775.) “Matters that are admitted or deemed admitted through [requests for admissions] discovery devices . . . are not subject to being contested through contradictory evidence.” (*Ibid.*)

Where responses to requests for admissions “are not timely served,” the party requesting admissions “‘may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted . . . .’” (*St. Mary v. Superior Court, supra*, 223 Cal.App.4th at p. 776.) Arellano followed this procedure to deem the requests admitted after Okyere failed to respond, and the trial court granted her motion.

As a result of that order, Okyere admitted that he did not make the payments required by the contract and breached the contract. Okyere has not shown the trial court erred in ordering these facts to be admitted.

Arellano also filed a motion for summary judgment. “ ‘A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.’ ” (*Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 562.) Where the plaintiff meets his or her burden to show no defense to the cause of action, the burden then “shifts to the defendant . . . to show that a triable issue of one or more material facts exists . . . .” (*Ibid.*) The court found Okyere did not file “an opposition” to the summary judgment motion. Arellano’s motion for summary judgment was supported by declarations containing facts and documents showing that Okyere breached the contract and that Arellano was entitled to relief for that breach. Okyere’s failure to file an opposition to the summary judgment motion with the required separate statement of facts meant he did not meet his burden to show a defense.

“A separate statement is a required part of opposing a summary judgment motion.” (*Whitehead v. Habig* (2008) 163 Cal.App.4th 896, 901.) “ ‘Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court’s discretion, for granting the motion.’ ” (*Rush v. White Corp.* (2017) 13 Cal.App.5th 1086, 1097.) A party prevailing on a breach of contract cause of action may receive relief including damages “ ‘that flow directly and necessarily from [the breach] or that are a natural result of a breach.’ ” (*Schellinger Brothers v.*

*Cotter* (2016) 2 Cal.App.5th 984, 1010.) The trial court did not err in granting summary judgment.

Okyere makes a series of claims about Arellano, her attorney, alleged “fraudulent acts,” an alleged right to an injunction, and other issues. But his brief does not comply with the rules of court. (Cal. Rules of Court, rule 8.883.) He does not include a complete procedural history. He omits references to relevant trial court orders. He does not set forth findings the trial court made against him. He refers to matters that are not part of the record and makes factual assertions without a citation to the clerk’s transcript. “[A]n appellate court may disregard any factual contention not supported by a proper citation to the record.” (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379, italics omitted.) Okyere has not made an adequate showing as to why the issues which he now claims as defenses were not timely and properly raised in an opposition and separate statement in response to the summary judgment motion. (*Whitehead v. Habig, supra*, 163 Cal.App.4th at p. 901.) He has not shown grounds for reversal.<sup>1</sup>

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<sup>1</sup> The parties note that while this case was on appeal Okyere filed a motion to set aside the summary judgment in the trial court. The trial court denied that motion. That is a separately appealable postjudgment order. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 927, fn. 6.) The record does not reflect that Okyere ever filed an appeal from that order, and it is not the subject of this appeal.

Arellano’s motion to augment the record, filed November 8, 2018, relating to “proceedings occurring *after* the order or judgment that is the subject of this appeal,” is denied. Okyere’s motion to augment the record, filed December 20, 2018, is not supported by a declaration, does not comply with the rules of court, and was not timely filed. It is denied. (*Russi v. Bank of*

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

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*America National Trust & Savings Assn.* (1945) 69 Cal.App.2d 100, 102.)

Kevin G. DeNoce, Judge

Superior Court County of Ventura

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Francis Okyere, in pro. per., for Defendant and Appellant.  
Osborne Law Firm, Brian A. Osborne for Plaintiff and  
Respondent.